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To: Commissioner For Patents
Art Unit 1761
Examiner S. Weinstein

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From: Emanuel S.Kemeny
SN 09/909,014
Meal Equivalent Food Bar

Subject: Response To Examiner's Action of 28 October 2003
Requesting Reasons For Patentability Over The Rejection Under 35 USC 103

REMARKS

1. Applicant appreciates the Examiner's careful examination of this application. This is a complete response to the Examiner's Action of 28 October 2003 wherein the examiner requested reasons why the current claims are patentable over the outstanding rejection under 35 USC 103. Claims 1-11 and 16 are pending in the application. Claim 1 is the only independent claim. Claims 12-15 have been cancelled. The remaining issue in the prosecution of this application is the rejection of claims 1-11 and 16 over 35 USC 103 over Snyder in view of Deane, Klatz, Schafer, and De Bryun.

2. Snyder does not teach a food bar. Snyder merely teaches a package of food items. The Applicant takes issue with the Examiner describing the article of Snyder as a bar. Snyder provides nothing more than a box which is a package of several food items that are separate and distinct by virtue of the separate package provided for each item. A dictionary definition of a bar from a Merriam-Webster Dictionary (10th Edition) defines a bar as a

"solid piece or block of material that is usually considerably longer than it is wide".

The example provided in the dictionary is a "candy bar". A copy of the dictionary definition from said Merriam-Webster Dictionary is attached. The pertinent portion is highlighted in yellow. The example of bars the applicant provides in his specification is as follows: Babe Ruth candy bar, Mounds candy bar, Cadbury candy bar, etc. Thus, applicant's definition of a bar is commensurate with that of the dictionary definition of a bar. The applicant is not claiming nor seeking patent protection for a carton of packaged food items as disclosed in Snyder. If the Examiner construes the package of Snyder to be bar, then the Examiner would consider a box full of tomato cans a bar or a box or bag full of groceries a bar. It is the position of the Applicant that one of ordinary skill in the art

would not construe the article of Snyder to be a bar in light of the provided dictionary definition and applicant's specification. The Examiner in his rejection states

"Snyder discloses a bar (as defined by applicant) -----"

The Applicant never defined a bar to include the article of Snyder. Applicant never disclosed a definition of a bar that would include a box containing various packages of food. Please note Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp., 65 USPQ2d 1961, 1965 (Fed. Cir. 2003)

"the first step in claim construction is to determine the ordinary and customary meaning, if any, that would be attributed to the term by those skilled in the art... dictionary definitions frequently are useful in this process..."

3. Claim 1 calls for a meal equivalent bar and not a package of food for ten meals as disclosed by Snyder. The rejection (Snyder in view of Deane, Klatz, Schafer and De Bryun) provides no motivation for the proposed combination under 35 USC 103. Specifically, the Examiner provides no motivation for combining Deane with Snyder. Moreover, in the body of the rejection, when discussing Klatz, Schafer, and De Bryun, the Examiner does not inform the Applicant why it would be obvious to combine these references with Snyder and or Deane. The Examiner, in the narrative of the 35 USC 103 rejection, never mentions any of the dependent claims in the 35 USC 103 analyses but rejects all of the dependent claims under Snyder in view of Deane, Klatz, Schafer, and De Bryun.

4. The ultimate determination of whether an invention would have been obvious under 35 USC 103 (a) is a legal conclusion based on underlying findings of fact. In re Katzab, 55 USPQ2d 1313, 1316 (Fed. Cir. 2000). The Examiner has failed to provide the facts to come to a conclusion of obviousness. The deficiencies of the cited references and the absence of motivation in the Examiner's 35 USC 103 rejection cannot be remedied by the Examiner's general conclusions about what is basic knowledge or common sense. In re Zurko, 59 USPQ2d 1693, 1697.

5. The five applied references (Snyder, Deane, Klatz, Schafer, and De Bryun) employed in the 35 USC 103 rejection fail to teach or suggest any and all of the elements in combination of any of Applicant's claims- independent or dependent. The Examiner's rejection applies five references but the rejection provides no motivation to combine and, as stated above in paragraph 3, the Examiner never discusses the dependent claims.

6. The following limitations in claim 1, the only independent claim, are not taught or suggested by the prior art.

- “Food Bar as a Bar Meal”- preamble of claim 1
- “segmented food bar” paragraph (a) of claim 1
- “segments corresponding to the plural courses of a Conventional Meal including Appetizer, Main-Course, and Dessert”- paragraph (a) of claim 1
- “each segment includes...one bar-common ingredient...one segment-specific ingredient...”- paragraph (c) of claim 1
- “The Appetizer segment...position at one end of the bar as a first course...”- paragraph (d) of claim 1
- “segments to provide a Bar Meal”- paragraph (g) of claim 1
- “segmented food bar package as a Package Bar...dimensioned for convenient handling and eating by one individual consumer. Appetizer end marked for eating start”- paragraph (h) of claim 1
- “whereby the consumer eats through the Bar Meal from Appetizer to Dessert to encounter segments in sequence which approximate a Conventional Meal in Balanced Nutrition”- last paragraph of claim 1

Snyder, for the reasons advanced above, does not teach a bar as defined by Applicant’s disclosure. Moreover, Applicant’s definition of bar found in Applicant’s disclosure is supported by common dictionary definition. Note previous paragraph 2 above.

Deane is cited to teach a bar meal of portions of meat and vegetables to be separated for cooking. Applicant’s bar, as claimed, is to be eaten through. Not only does Deane fail to teach this limitation of being “eating through the bar”, Deane by virtue of being separated for cooking, teaches away from Applicant’s invention as a meal bar to be eaten as a bar.

Klatz is cited to teach a food bar of plural parts for drugs and other nutrients for chronologically appropriate dosages. Applicant’s bar, as claimed, is a “Meal Replacement Food Bar... of appetizer, main course, and dessert... *to be eaten thru by a consumer*” (emphasis added). Klatz does not teach this claimed limitation nor it is seen how this limitation is obvious.

Schafer is cited to teach a compacted food bar of uniform ingredients. Applicant’s claimed invention calls for a segmented food bar of appetizer, main course, and dessert. Schafer is silent to this limitation nor is it seen how Schafer can render obvious a segmented bar as claimed.

De Bryun is cited to teach a multi-segmented, multi-ingredient food bar which provides a wide variety of food stuffs for eating in a clean and hygienic manner, including nuts, fruits, marzipan, etc. Applicant’s claimed invention is a “segmented Meal Replacement Food Bar whose segments in sequence correspond to a Conventional Meal of Appetizer,

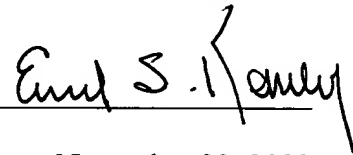
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Main Course and Deserts...the Appetizer segment of size and ingredients to *stimulate but not satiate appetite*, the Main-Course segment of size and ingredients to *satisfy appetite*... and all to provide the Balanced Nutrition of a Conventional Meal” (emphasis added). De Bryun and all the other references just do not teach this claimed limitation or make Applicants claimed invention obvious.

For the reasons advanced above, reconsideration and withdrawal of the rejection under 35 USC 103 be withdrawn. Early allowance would be appreciated.

Respectfully Submitted,

Emanuel S. Kemeny

A handwritten signature in black ink, reading "Emanuel S. Kemeny", is written over a horizontal line.

November 23, 2003